object believing it to be a submarine and sank his own vessel. The court held that whether or not the object was a submarine the loss was the consequence of warlike operations.

The question of war risk or marine risk will always be chiefly a question of fact and of the interpretation of the particular policy, but as yet no sufficient reason has been suggested why a loss from a collision between two merchant vessels bound on peaceful missions, if caused by war, should not be reckoned the result of a war risk.

THE EFFECT OF BANKRUPTCY ON A RIGHT OF ENTRY FOR CONDITION BROKEN. — In *Matter of Elk Brook Coal Co.*,[1] the District Court for the Middle District of Pennsylvania decided that a landlord who, prior to the bankruptcy of his tenant, had become entitled to terminate the lease for a default in the payment of rent and royalties, might do so subsequently against the latter's trustee in bankruptcy.[2] The case, however, contains *dicta* that if the landlord could have been assured complete financial reparation the trustee would have been permitted to retain the leasehold despite the provision for re-entry contained in the lease. The soundness of the decision itself seems unquestionable; [3] that of the qualifying *dicta* perhaps somewhat less patent.

Bankruptcy courts evince at times a rather high-handed tendency to extend the effect of bankruptcy in defeating existing rights beyond that called for or authorized by the Bankruptcy Act. The jurisdiction which they assert to sell, free and clear of encumbrances, property of the bankrupt's already subject to valid liens, and to remit the lienholders to a claim upon the proceeds, is an example of this tendency.[4] So too was the unsuccessful attempt to establish by judicial legislation that an insolvent tenant, whose trustee in bankruptcy refused to assume the lease, was *ipso facto* relieved by bankruptcy from further obligations under it.[5]

Ann. 388 (1867); Singleton *v.* Phenix Ins. Co., 132 N. Y. 298, 30 N. E. 839 (1892). *Cf.* Société Nouvelle D'Armement *v.* Spillers, [1917] 1 K. B. 865. But the loss incurred in abandoning the voyage because of fear of capture cannot be recovered on a war policy as a consequence of hostilities. Hadkinson *v.* Robinson, 3 B. & P. N. R. 388 (1803); Lubbock *v.* Rowcroft, 5 Esp. 50 (1803); Nickels & Co. *v.* London & Provincial Marine Ins. Co., 70 L. J. Q. B. N. S. 29 (1900); Kacianoff *v.* China Traders Ins. Co., [1914] 3 K. B. 1121; Becker Gray & Co. *v.* London Assurance Corp., [1918] A. C. 101. *Cf.* The Knight of St. Michael, [1898] P. 30. But if the voyage is abandoned because its further prosecution would be illegal as trading with the enemy, the insured can recover for a "restraint of princes." British & Foreign Marine Ins. Co. *v.* Sanday, [1916] 1 A. C. 650; Associated Oil Carriers *v.* Union Ins. Society, [1917] 2 K. B. 184.

[1] 44 Am. B. R. 283 (D. C. Pa., 1919).

[2] For a more complete statement of the facts of this case, see RECENT CASES, p. 725.

[3] Lindeke *v.* Associates Realty Co., 17 Am. B. R. 215; 146 Fed. 630 (C. C. A., 8th Circ., 1906). See 1 REMINGTON, BANKRUPTCY, § 983; 1 LOVELAND, BANKRUPTCY, § 387.

[4] *In re* Pittelkow, 92 Fed. 901 (D. C. E. D. Wis., 1899).

[5] *In re* Jefferson, 2 Am. B. R. 206, 93 Fed. 948 (D. C. Ky., 1899); Bray *v.* Cobb, 3 Am. B. R. 788, 100 Fed. 270 (D. C. N. C., 1900). See 1 REMINGTON, BANKRUPTCY, § 653, and see an article in 39 AM. L. REG. (N. S.) 656 on this subject.

Logically, unless the Bankruptcy Act so provides, there would seem to be no satisfactory reason why the rights of the landlord, an innocent third party, should be impaired by the bankruptcy of his tenant. An exception to this principle must, however, be noted. As in the case of all onerous contracts, the trustee has a reasonable time in which to elect whether or not he will assume the tenant's obligations under the lease, and acquire the rights which the latter may still have therein.[6] If, however, the landlord is already entitled as against the tenant to enter for condition broken, it is submitted that the general rule should govern and that the trustee should stand squarely in the tenant's shoes.

Apart from bankruptcy the right of a landlord to terminate a lease upon breach of condition is well settled. There are, however, certain doctrines, some legal, some equitable, which restrict this right. At law the right may be "waived" by an act affirming the existence of the tenancy subsequent to, and with knowledge of the breach.[7] Acceptance of rent not yet due at the time of breach offers a typical example of such waiver.[8] Possibly the mere lapse of time without action by the landlord may debar him from exercising his right of entry.[9] Finally equity, abhorring a forfeiture, will enjoin the enforcement of the legal remedy when money damages would offer exact and adequate relief for the injury occasioned by the breach.[10] Such equitable interference, however, seems restricted by its terms, at least in the absence of fraud or accident, to cases where the condition broken was one for the payment of money, and where compensation for the delay in performance can be made by payment of interest.[11]

Accordingly, though bankruptcy should in no wise impair the landlord's right of entry, yet a bankruptcy court, because it is a court of equity, may properly take cognizance of all the above restrictions upon that right, equitable as well as legal; and the *dicta* in the principal case, since they refer only to situations embraced within the scope of the last of these restrictions, would seem therefore to be sound.[12] On the other hand, bankruptcy courts should not be led by a desire to protect general creditors to extend the legal doctrine of waiver, or the equitable doctrine of relief against forfeiture, beyond the limits already defined by the law of Landlord and Tenant. This, it must be admitted, they seem sometimes to have been inclined to do.[13] Possibly it would

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[6] *Re* Sherwoods, 210 Fed. 754, 127 C. C. A. 304 (C. C. A., 2d Circ., 1913); Fleming *v.* Noble, 250 Fed. 733, 163 C. C. A. 65 (C. C. A., 1st Circ., 1918).

[7] Pennant's Case, 3 Co. 64 *a* (Q. B. 1596).

[8] Goodright *v.* Davids, Cowper, 803 (K. B. 1778).

[9] See Gradle *v.* Warner, 140 Ill. 123, 29 N. E. 1118 (1892); Allen *v.* Dent, 72 Tenn. (4 Sea) 676 (1880); Catlin *v.* Wright, 13 Neb. 558, 14 N. W. 530 (1882). But see *contra:* 2 TIFFANY, LANDLORD AND TENANT, § 194, i (2), and cases there cited.

[10] Mactier *v.* Osborn, 146 Mass. 399, 15 N. E. 641 (1888); Henry *v.* Tupper, 29 Vt. 358 (1857).

[11] See 1 TIFFANY, REAL PROPERTY, § 77; 2 TIFFANY, LANDLORD AND TENANT, 1409 *et seq.*

[12] *Cf. In re* Gutman, 28 Am. B. R. 643, 197 Fed. 472 (D. C. Ga., 1912).

[13] See *In re* Stranton Co., 20 Am. B. R. 549, 162 Fed. 169 (D. C. Conn., 1908); *In re* Rubel, 21 Am. B. R. 566, 166 Fed. 131 (D. C. Wis., 1908); *In re* Schwartzman, 21 Am. B. R. 885, 167 Fed. 399 (D. C. S. C., 1909); Gardner *v.* Gleason, 259 Fed. 755 (C. C. A., 1st Circ., 1919); but note the remarks of Anderson, J., dissenting, in Gardner *v.* Gleason, *idem*, p. 764.

be conducive to self-restraint to lay greater emphasis upon the fact that bankruptcy *per se* gives to the tenant, in this connection, no new immunities whatsoever.

RESTRICTIVE INTERPRETATION. — Genuine interpretation seeks to determine what the words of a statute provide as to a particular situation.[1] But when it is clear what the words of the statute provide, is it ever permissible by interpretation to depart from those words on the ground that, had the legislature adverted to the particular situation at issue, it would not have desired the statute to be applicable to it?

Some decisions under a New York statute are of interest in this connection. The statute makes it a misdemeanor to use without consent a person's name or picture "for advertising purposes or for the purposes of trade." [2] It seems clear that the legislature would not have desired the statute to be applied to the publication of news,[3] yet its wording clearly includes such publication.[4] However, when persons sued whose pictures had been published in a newspaper,[5] or in a magazine,[6] they were denied recovery. And in the recent case of *Humiston* v. *Universal Film Mfg. Co.*,[7] a person whose picture had been published in a weekly news film of current events was likewise denied recovery.

What in reality is the process by which such a result may be reached? Courts almost invariably justify any such departure from the language of the statute as an application of the true legislative intent [8] which supposedly had been inaptly expressed by the "literal" [9] words of the act. Surely in many cases this talk is inaccurate. In the cases above, for example, even assuming that the legislature, had it considered the matter, would not have desired the statute to be applied to the publication of news, it does not follow that the legislature intended that it should not be so applied. Had it so intended it would doubtless have expressed that intention in the form of a qualification rather than have

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[1] This becomes necessary when the words are ambiguous, or when there is a choice between conflicting provisions. See Roscoe Pound, "Spurious Interpretation," 7 COL. L. REV. 379, 381.

[2] See CIVIL RIGHTS LAW (CONSOL. LAWS, c. 6), §§ 50, 51.

[3] To do so would make it illegal for a paper even to mention a person's name without consent.

The Act was apparently passed to rectify the law as found in the Robertson case, where a woman whose picture had been extensively used in the advertisement of a certain commodity was denied recovery. Robertson *v.* Rochester Folding Box Co., 171 N. Y. 538, 64 N. E. 442 (1902).

[4] Surely a paper does not publish people's pictures as a compliment to them, but for the purposes of its trade, the dissemination of news.

[5] Jeffries *v.* New York Evening Journal Publishing Co., 67 Misc. 570, 124 N. Y. Supp. 780 (1910).

[6] Coyler *v.* Richard K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999 (1914).

[7] 178 N. Y. Supp. 752 (1919). See RECENT CASES, p. 735, *infra*.

[8] See *In re* Howard's Estate, 80 Vt. 489, 68 Atl. 513 (1908); Curry *v.* Lehman, 55 Fla. 847, 47 So. 18 (1908).

[9] When the words of the statute are inconvenient they are frequently referred to in a derogatory manner as the "literal" words of the statute, as though the use of that adjective justified any liberties which might be taken with them by way of interpretation.